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International Convention for the Protection of All Persons from Enforced Disappearance

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List of issues in relation to the report submitted by Honduras under article 29, paragraph 1, of the Convention

Addendum

Replies of Honduras to the list of issues*

[Date received: 5 February 2018]

* The present document is being issued without formal editing.

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Introduction

1. The Government of Honduras submitted its initial report under article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/HND/1) to the Committee on Enforced Disappearances on 17 March 2016.

2. The present document constitutes the response of the State party to the Committee's list of issues in relation to the initial report. The Ministry of Human Rights, in conjunction with representatives of the State institutions that make up the Special Response Group on Human Rights, including the legislative and judicial branches, coordinated the production of the present report. The drafting process took place between November 2017 and January 2018.

I. General information

Reply to paragraph 1 of the list of issues

3. Regarding the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications, the Government of Honduras regularly reviews all optional provisions of international instruments by which the State has not yet agreed to be bound, as is the case with the declarations under the articles mentioned above.

4. At the domestic level, the Office of the National Commissioner for Human Rights, an independent body established under the Constitution, has competence to receive complaints from citizens concerning violations of their rights. The Public Prosecution Service is the constitutional body responsible for bringing criminal proceedings on behalf of society through the Office of the Special Prosecutor for Human Rights.

5. In addition, alleged victims of enforced disappearance may lodge complaints before the Inter-American Commission on Human Rights. We take the liberty of reminding the Committee that international complaints mechanisms, such as the one established under article 31, are functionally precluded from considering matters being examined under another procedure at the international level.[1] In the light of our review, it is therefore not considered necessary for Honduras to make the aforementioned declarations.

Reply to paragraph 2 of the list of issues

6. The Office of the National Commissioner for Human Rights is empowered to receive complaints concerning enforced disappearance. As part of the activities undertaken in relation to the Convention, the Office continues to train personnel in military units and the civilian and military police to respect human rights and prevent rights violations.

7. As evidence of its competency to receive complaints, the Office stated in its 2015 and 2016 annual reports to the National Congress that it had received a total of 27 complaints relating to enforced disappearance in 2015 and 23 complaints in 2016. Those cases were registered at the national level and investigated by the regional or departmental offices at which they were lodged.[2]

[1] International Convention for the Protection of All Persons from Enforced Disappearance, art. 30 (2) (c) and American Convention on Human Rights, art. 46 (1) (c).

[2] Annual Report of the Office of the National Commissioner for Human Rights 2015, available at http://conadeh.hn/wp-content/uploads/2016/04/Informe-Anual-2015-FINAL-VERSI%C3%93N-PDF.pdf, p. 33, table 5, accessed on 1 February 2018; Annual Report of the Office of the National Commissioner for Human Rights 2016, available at http://conadeh.hn/wp-content/uploads/2017/04/Informe-Anual-2016.pdf, p. 35, table 5, accessed on 1 February 2018.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

Reply to paragraph 3 of the list of issues

8. As at December 2017, according to Public Prosecution Service statistics, there had been a total of 63 investigations of cases of enforced disappearance; 55 (87 per cent) of the victims were male and 8 (13 per cent) were female. As for their nationality, 61 were Honduran nationals and 2 were nationals of the United States of America. Regarding the age range, 17 victims were aged between 31 and 60, 14 victims were aged between 19 and 30, 6 victims were minors, and 1 person was over 60 years of age. The age of 25 disappeared persons is unknown.

9. With regard to the date of disappearance, only one case dates from before 2010, the year in which the Convention entered into force. There is evidence of State participation in 25 cases; the perpetrator of the crime is unknown in the remaining 38 cases.

10. In terms of up-to-date statistical information requested by the Committee on the missing Honduran migrants, 419 cases have been recorded in the forensic database, 94 of which concern missing women and 325 missing men. A total of 974 DNA samples have been collected. Of those, 419 have been processed and 31 Hondurans have been positively identified.

11. The breakdown of cases is as follows:

Age	*Number of cases*
0–12	6
13–17	45
18–30	268
31–45	73
46 and over	7
No age information	12
Pending	8

Source: Prepared by the Directorate for Research and Compliance with International Obligations using data from the Argentine Forensic Anthropology Team.

12. Of the individuals identified, 5 were found in Texas and 10 in Arizona (in the United States) and 16 were found in Mexico. The Ministry of Foreign Affairs and International Cooperation arranged to have their bodies repatriated and returned to their relatives.

Reply to paragraph 4 of the list of issues

13. With regard to the question posed in subparagraph (b), the phrase "thereby limiting or denying their recourse to the applicable constitutional and procedural guarantees", read with paragraphs 1 and 2 of article 333-A of the Criminal Code, should be understood as a consequence of the criminal act, in line with article 2 of the Inter-American Convention on Forced Disappearance of Persons.

14. As for subparagraph (c), concerning the improvements mentioned in the initial report, it should be noted that the new Criminal Code has not yet been adopted by the National Congress. The Government of Honduras undertakes to inform the Committee when the new legislation is passed. Regarding subparagraph (d) and the way in which mitigating or aggravating circumstances affect the penalties established for enforced disappearance, the circumstances mentioned in the initial report[3] are weighed up by the sentencing court and are used to determine the specific penalty based on the sentencing

[3] CED/C/HND/1, paras. 44 and 45.

range as established by law (15 to 20 years). In other words, if there are found to be a number of aggravating circumstances surrounding the commission of the crime, the court may decide to impose the maximum sentence of 20 years. If, on the other hand, there are mitigating circumstances, the court may hand down a 15-year or a mid-range sentence.

15. As concerns initiatives to establish mitigating or aggravating circumstances regarding the crime of enforced disappearance in accordance with article 7 (2) of the Convention, although the Criminal Code does not provide for the mitigating or aggravating circumstances described in that article, the Public Prosecution Service may refrain from bringing criminal proceedings if the person concerned cooperates effectively in the investigation.

Reply to paragraph 5 of the list of issues

16. In connection with efforts to combat transnational organized crime and its impact on the crime of enforced disappearance, the State set up the National Inter-Agency Security Force pursuant to National Council for Defence and Security Resolution No. 20-2014 of 27 January 2014, incorporating the National Police, the Public Prosecution Service, the Directorate for State Intelligence, the National Institute of Migration, the Supreme Court of Justice and the armed forces. The Security Force has focused its efforts on combating drug trafficking and its effects, including homicides, drug-running and human trafficking. It has a group of certified prosecutors whose duties include providing technical and legal assistance to the Force's members. Three judges were convicted in 2016 for involvement in criminal organizations and organized crime.

Reply to paragraph 6 of the list of issues

17. With regard to the steps taken to incorporate the criminal responsibility of superiors into national law, the definition of the offence of enforced disappearance set forth in article 333-A of the Criminal Code provides for the circumstances described in article 6 (1) (b) of the Convention, as it covers acts carried out with the "authorization, support or acquiescence" of a public official. Under domestic law, an "official" is understood to be a "superior" within the meaning Convention. Hence, the criminal responsibility of superiors is specifically provided for by Honduran law.

18. Invoking superior orders as a justification for enforced disappearance is expressly prohibited under article 71 of the Constitution and articles 24 (6) and 333-A of the Criminal Code. Obedience to orders may only be invoked when it does not violate or restrict a right recognized by the Constitution or by one of the treaties to which Honduras is a party.[4]

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

Reply to paragraph 7 of the list of issues

19. Regarding subparagraph (a), on ensuring that the offence of enforced disappearance is dealt with as a continuing offence and on the term of limitation, article 37 of the Criminal Code defines continuing offences and article 98 establishes the term of limitation applicable to offences. Thus, those articles and article 333-A of the Criminal Code — together with the Convention, which forms part of domestic legislation — provide for the possibility that a perpetrator may subject a victim to an unlawful situation for a prolonged period and that an offence may be committed over an extended period. The term of limitation would therefore commence from the moment that the enforced disappearance ceases and not from the date of disappearance. The effective remedies available to victims through the Public

[4] See also Legislative Decree No. 69-2017, the Police Service Act, arts. 10 (7) and (9) and 108 (5).

Prosecution Service are established in articles 32 to 34 of the Code of Criminal Procedure, which provides for judicial review of the administrative closure of a case.

20. Regarding subparagraph (b) and the retroactive application of the definition of enforced disappearance, an investigation is currently under way into a case of alleged enforced disappearance which occurred before 2010. The amendment to article 333-A was adopted by means of Legislative Decree No. 49-2012 of 17 April 2012 and published in Official Gazette No. 32873 of 16 July 2012.

21. Regarding subparagraph (c) and the new draft Criminal Code, please refer to the reply to paragraph 4 (c) of the list of issues.

Reply to paragraph 8 of the list of issues

22. With regard to subparagraph (a), on the jurisdiction of the Honduran courts over enforced disappearance offences committed abroad, article 5 of the Criminal Code establishes that national courts can indeed exercise jurisdiction when the offence is committed abroad, provided that at least one of the requirements mentioned in the report is met.[5] No prior agreement with any State is required in order to exercise that power, and it may be exercised irrespective of whether the State of which the perpetrators or victims are nationals has ratified the Convention.

23. As for subparagraph (c) and the question regarding diplomatic immunity and its application, article 8 of the Criminal Code also applies to crimes against humanity, including enforced disappearance, which is in line with the judgments of the International Court of Justice.[6] However, those provisions do not apply once immunity has ceased, at which point formerly immune persons become subject to arrest and prosecution.

24. Regarding subparagraph (d), on the measures taken to ensure that all allegations of enforced disappearance committed by military personnel are investigated from the outset by the civilian authorities, the Constitution prohibits the use of military courts to try non-military offences. When an offence is alleged to have been committed by police officers, the Public Prosecution Service conducts an independent investigation without police involvement. The same applies when military personnel or security officials are alleged to be involved.

Reply to paragraph 9 of the list of issues

25. As regards subparagraph (a) and the possibility of extradition to other States for enforced disappearance offences, given that the Convention is part of national law, the provisions of article 13 apply directly, meaning that enforced disappearance is an extraditable offence. Furthermore, article 10 of the Criminal Code only prohibits extradition for political crimes.

26. Regarding the agreement with the United States of America[7] and initiatives for amending the Constitution and concluding and/or amending extradition agreements, it is not currently possible to comment on the obstacles to applying that agreement since it has not been invoked. Honduras has not considered amending article 102 of its Constitution, nor has it considered concluding any new extradition agreements or amending existing ones.

27. As for subparagraph (b), the Ministry of Foreign Affairs and International Cooperation has reported that there is no record of any cases in which an individual suspected of having committed an offence of enforced disappearance has been extradited, nor are there any cases of extradition being denied or of assistance being sought.

[5] CED/C/HND/1, para. 53.

[6] *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of 14 February 2002.

[7] CED/C/HND/1, para. 84.

Reply to paragraph 10 to the list of issues

28. In relation to subparagraph (a), on the domestic legal measures relating to the detention of an individual who is suspected of having committed an offence of enforced disappearance, Honduran criminal procedure provides for three hearings before a judge and one hearing before a trial court. The judiciary may order the following interim measures in respect of the accused:

(a) Arrest or capture;

(b) Pretrial detention;

(c) Preventive detention;

(d) House arrest, with or without monitoring, at the individual's own home or at the home of someone else, subject to the consent of that person;

(e) Placement under the care or supervision of a particular person or institution, which reports periodically to the court;

(f) Order to appear periodically before a judge or another authority of the court's choice;

(g) Prohibition from leaving the country, place of residence or such other geographical area as the court may determine;

(h) Prohibition from attending specific gatherings or going to specific places;

(i) Prohibition from communicating with specific persons, providing such prohibition does not affect the accused's right of defence;

(j) Requirement of a deposit of money or securities, a mortgage security instrument, bail or a surety bond;

(k) Temporary committal to a psychiatric institution, on the prior recommendation of a qualified expert;

(l) Suspension from duty when the individual is accused of an offence against the public administration.[8]

29. Regarding subparagraph (b), relating to legal provisions for notification of the arrest of an alleged offender to other States that might also have jurisdiction, the Ministry of Foreign Affairs and International Cooperation has no record of cases of enforced disappearance offences.

Reply to paragraph 11 of the list of issues

30. In response to subparagraph (a), on the investigation processes followed by the authorities to shed light on and establish the facts relating to an enforced disappearance, the Public Prosecution Service, through the Police Investigation Directorate or the Technical Criminal Investigation Agency, is in charge of initiating and conducting all investigations and taking all actions necessary to identify offences of enforced disappearance.

31. In response to subparagraph (b), on the necessary human and technical resources and adequate training to effectively carry out investigations, the Public Prosecution Service, through the Office of the Special Prosecutor for Human Rights, gave a course on criminal investigation, analysis of forensic evidence and human rights violations to 35 prosecutors throughout the country. The course, the only one of its kind in Central America, comprised eleven 18-hour modules. In 2015, with the support of the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Swiss Agency for Development and Cooperation and the University for Peace, six court officers from the Office of the Special Prosecutor for Human Rights graduated as specialists in international human rights law after completing a 190-hour

[8] Code of Criminal Procedure, art. 173.

postgraduate course. In 2016, two prosecutors from the Office of the Special Prosecutor for Human Rights (a man and a woman) passed a 180-hour training course on international human rights law taught at the Orlan Arturo Chávez Training School for Prosecutors. The Office currently has 12 prosecutors and 3 assistant prosecutors in Tegucigalpa, 6 prosecutors and 1 assistant prosecutor in San Pedro Sula, 2 prosecutors in Ceiba, 1 in Choluteca and 1 in Tocoa. Furthermore, 44 members of the Public Prosecution Service have received training on the Istanbul Protocol.

Forensic Medicine Departments	*Number of persons trained*
Management	3
Odontology	4
Mental and social evaluation	3
Forensic clinic	9
National oversight of local doctors	7
Residency	5
Forensic pathology	4
Forensic laboratories	7
Quality management	1
Training	1

Source: Public Prosecution Service.

32. With regard to subparagraph (c), statistics have been provided in the reply to paragraph 3 of the list of issues.

33. Concerning subparagraph (d), on limitation of access to places of detention where a disappeared person may be present, the National Mechanism for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment and the Office of the National Commissioner for Human Rights report that, to date, there have been no cases of limiting of access to places of detention where a disappeared person might be present.

34. As for subparagraphs (e) and (f), on the mechanisms to protect complainants, witnesses, relatives of disappeared persons and their legal representatives against any ill-treatment and intimidation that might result from the complaints, and the description of procedures and provision of disaggregated statistical information, the Public Prosecution Service has set up a commission to review the Witness Protection Act and assess its effectiveness. The work of this Commission resulted in the issuance of special implementing regulations for the Act, which were approved by Decision No. FGR-012-2017 and published in the Official Gazette on 30 September 2017. Witness protection is provided at the initiative of the Public Prosecution Service, which coordinates action with the National Police.

35. The national protection system was set up in 2015, pursuant to the Act on the Protection of Human Rights Defenders, Journalists, Media Professionals and Justice Officials. The system comprises the Ministry of Human Rights as the lead body; the National Protection Council as a deliberative and advisory body; the Technical Committee of the Protection Mechanism, which is responsible for issuing opinions on risk assessments and drawing up plans for preventive and protective measures for applicants; the Directorate-General of the Protection System as the executive body; and the Department of Human Rights of the Ministry of Security as the technical body specializing in the implementation of police measures.

36. The Directorate-General of the Protection System has four units, three of which are in operation. The Reception and Immediate Response Unit had handled 230 cases as at 30 December 2017, of which 65 were rejected either because there was no causal link between the situation of risk and the applicant's activities or because the applicant was not entitled to protection under the Act. This does not mean that applicants are left unprotected, however; such cases are referred to other bodies that are responsible for their protection. Of the remaining 165 cases, 143 are pending and 22 cases were closed because the persons

seeking protection had left the country or because they had not expressed a desire to take the case forward.[9]

37. The Risk Analysis Unit had conducted 91 risk analyses as at December 2017.[10] The Implementation and Monitoring Unit, which is in charge of requesting the authorities to implement prevention and protection plans and measures ordered by the Technical Committee of the Protection Mechanism, monitors compliance with the 774 agreed protection measures. Of those, 642 have been implemented, including technological, infrastructural and police measures.

38. The Prevention and Contextual Analysis Unit is currently being set up. It will be responsible for conducting targeted risk assessments and drawing up maps showing risks, context and assault patterns that will serve as input for all the mechanism's units.

39. In terms of disaggregated statistics, of the 143 cases submitted to the Reception and Immediate Response Unit, 92 (64 per cent) concern human rights defenders, 30 (21 per cent) journalists, 9 (6 per cent) media professionals and 12 (9 per cent) justice officials, 3 of whom are human rights defenders who have specialized in enforced disappearance cases throughout their careers.[11]

40. Regarding subparagraph (g), on the measures taken to protect human rights defenders working to combat enforced disappearance from bodily harm and threats to their lives, three cases pertaining to such persons have been received. One case involves an interim measure granted by the Inter-American Commission on Human Rights in 2009 following incidents that occurred over a number of years as a result of the individual's work as a human rights defender. The beneficiary of the measure reported being followed, watched and subjected to smear campaigns on social media. The other two cases were submitted personally by the persons concerned; one involved security incidents and a smear campaign on social media, and the other involved security incidents at the premises of the complainant's organization.

41. The three individuals are benefiting from protective measures, including:

(a) Active investigation of the events giving rise to the need for protection;

(b) Police liaison;

(c) Police patrols;

(d) Police escort;

(e) Self-defence course;

(f) Telephone link with the mechanism's emergency number;

(g) Lighting at the entrance to the person's home and place of work;

(h) Closed-circuit television cameras.

42. With regard to subparagraph (h), on providing information on the measures to prevent suspects in cases of enforced disappearance from influencing investigations or threatening persons who participate in them, please refer to the replies to paragraphs 8 (d) and 10 (a) of the list of issues. The Office of the Special Prosecutor for the Prosecution of Justice Sector Officials investigates cases involving public officials.

Reply to paragraph 12 of the list of issues

43. Regarding limitations that may be placed on requests for mutual legal assistance, such assistance is provided on a basis of reciprocity. With regard to measures taken to ensure assistance and cooperation in assisting victims, the treaties mentioned in paragraph 86 of the initial report of Honduras include two treaties on mutual legal assistance in

[9] Data supplied by the Directorate-General of the Protection System.
[10] Data supplied by the Directorate-General of the Protection System.
[11] Data supplied by the Directorate-General of the Protection System.

criminal matters, one between Honduras and Brazil and the other between Honduras and Mexico. Honduras is also a party to the Inter-American Convention on Letters Rogatory, the Inter-American Convention on the Taking of Evidence Abroad and the Inter-American Convention on Mutual Assistance in Criminal Matters.

44. With regard to measures taken to ensure cooperation and assistance in relation to the disappearance of migrants and the discovery of unidentified remains, in 2012, the Ministry of Foreign Affairs and International Cooperation signed the Inter-Institutional Cooperation Agreement on the Establishment of Mechanisms for the Exchange of Information on Untraced Migrants and Unidentified Bodies. The other cooperating institutions are the Ministry of Human Rights, Justice, Governance and Decentralization, the Honduras National Forum on Migration, the Centre for Research and Promotion of Human Rights and the Argentine Forensic Anthropology Team.

45. Furthermore, the Act on the Protection of Honduran Migrants and Members of Their Families, enacted by means of Decree No. 106-2013, provides for the establishment of the Solidarity Fund for Honduran Migrants, which uses it resources to cover, partially or entirely, the costs of legal assistance for the voluntary repatriation of Honduran migrants in situations of need or emergency, to provide assistance to migrants with disabilities when their repatriation is requested by Honduran consulates and to repatriate the remains of Honduran citizens who have died on foreign soil and whose families lack the necessary resources to arrange repatriation on their own. The Fund also finances support centres for returning migrants and social and labour reintegration programmes.

46. Another measure taken by Honduran consulates in the south of Mexico is to appeal to bodies known as "reconciliation councils", which are made up of officials from the Office of the Attorney General of Mexico and representatives of human rights institutions and civil society and which deal with issues relating to incarcerated migrants, migrants in detention awaiting trial and cases involving disappeared migrants.

47. There is also a council on disappeared migrants whose main purpose is to provide support to families searching for disappeared family members. The council's principal achievement to date has been the compilation of all pertinent information on disappeared persons in single individual case files, which are used by all key stakeholders.

IV. Measures to prevent enforced disappearances (arts. 16–23)

Reply to paragraph 13 of the list of issues

48. Regarding paragraph 13 (a), on domestic legislation prohibiting the expulsion, return, surrender and extradition of a person where there are grounds for believing that he or she would be in danger of enforced disappearance, according to article 15 of the Constitution, Honduras endorses principles and practices of international law that promote human solidarity. Under article 16 (2), once international treaties concluded by Honduras with other States enter into force, they form part of domestic law. The principle of non-refoulement as a precept of *jus cogens* is enshrined in article 44 of the Migration and Aliens Act. Article 101 of the Constitution prohibits extradition for political offences and related ordinary offences.

49. Regarding paragraph 13 (b), on the remedies available to appeal against administrative detention and extradition and the effects of those remedies, the extradition procedure was established by the Supreme Court of Justice in its Decision No. 33147 of 10 June 2013, which sets out the legal process for extradition in Honduras, including the detention, defence, judgment and sentencing phases. The duration of detention is set in accordance with the provisions of the conventions and treaties to which Honduras is party.

50. Under the Administrative Procedure Act, the final remedy available through administrative channels is an application for review. Once administrative remedies have been exhausted, the person concerned may have recourse to judicial remedies through the ordinary courts or by filing a writ for enforcement of constitutional rights (writ of *amparo*)

before the Supreme Court. The petitioner may request that the measure in question be suspended until the matter is resolved.

Reply to paragraph 14 of the list of issues

51. Regarding paragraph 14 (a), on whether legal provisions on prompt notification and access to counsel, physicians, family members or any other person apply from the moment of deprivation of liberty and whether exceptions are permitted, all of the measures mentioned apply from the moment of deprivation of liberty, with the possible exception of the right to consular assistance in cases where the person concerned claims to be the victim of persecution, and consular notification might put him or her at risk.

52. Regarding paragraph 14 (b), on the existing legal provisions on consular notification in cases where the person deprived of liberty is a foreigner, the relevant provisions are described in paragraphs 55 and 56 of the initial report of Honduras.

53. Regarding paragraph 14 (c), the function of the Inspectorate-General, established pursuant to article 19 of the National Prison System Act, include monitoring the operations of prisons and other detention facilities; responding to any complaints it receives, from anyone, regarding violations of the National Prison System Act, and its implementing regulations; and investigating such complaints, informing the National Directorate of the findings of its investigations. If those findings suggest the probable commission of an offence, the Public Prosecution Service is informed accordingly.

54. In addition to the centres and registers described in paragraphs 111 to 113 of the initial report, registers of persons deprived of their liberty are kept by the Santa Rosita Psychiatric Hospital. Judicial orders for deprivation of liberty must contain: (1) the detainee's identity data; (2) the charge; and (3) the details of the relevant judicial authority. If the judicial order does not contain this information, the detention facility's management has grounds to refuse to admit the individual.

55. When detainees enter a detention facility, their identity is verified and their documents, fingerprints and photographs are checked. Their arrival is registered in an arrivals book and an individual file is created on their status with regard to prosecution and sentencing, of which they have the right to be informed.

56. To ensure that all registers of detainees contain the information required under article 17 (3) of the Convention, the management of detention facilities must keep a register of inmates with a view to monitoring the time limit for temporary detention or for conditional release, as applicable. Under article 321 of the implementing regulations of the National Prison System Act, the register of inmates must include:

(a) Personal information on all inmates;

(b) Date of entry and, for persons awaiting trial, the date on which the time limit for temporary detention expires; for convicted persons, the date of conditional release or of definitive release after completion of sentence must be indicated;

(c) Names and addresses of immediate family or close relatives;

(d) Detention centre in which the inmate is held and exact details of where the inmate is being held within the centre;

(e) The name of the inmate's lawyer, the judge in charge of his or her case or the enforcement judge.

57. With regard to migrants in custody, the migrant interview form has been provided as an annex to enable the Committee to see the type of information collected.[12]

58. The registry forms used by the National Police and the Military Police have also been provided as annexes to this document so that the Committee can see the type of information collected.[13]

[12] See annex I.

59. Regarding paragraph 14 (d) on the penalties set by the law in cases where an official fails to record a deprivation of liberty or enters inaccurate information, the applicable penalties are set out in articles 333, 333-A and 349 of the Criminal Code, which establish the offences of illegal detention, enforced disappearance and abuse of authority, respectively.

60. Regarding the training measures in place to ensure that such omissions are not repeated, the Legal Department of the National Prison Institute regularly organizes induction training and workshops for the relevant officials to raise awareness of the importance of maintaining up-to-date records of detainees. The training is tailored to the needs of each detention centre. The Department of Human Rights of the Ministry of Security plans to include training on the importance of detainee registers and on prevention and investigation of enforced disappearance in its staff training programme for 2018.

Reply to paragraph 15 of the list of issues

61. With regard to access to the information referred to in article 18 (1) of the Convention, detainee registers are made public in accordance with the Transparency and Access to Public Information Act.[14] Anyone can request access to the registers, in writing or electronically, without having to state his or her reasons and without undertaking any formal steps. Regarding prompt and effective judicial remedies for obtaining information without delay and the implementation of those remedies, the Constitution of Honduras provides for the remedy of habeas corpus. Writs of habeas corpus can be submitted orally or in writing. No particular powers or formalities are required to do so and any means of communication may be used, inside or outside working hours and free of charge. Petitions for habeas corpus are processed and resolved as a matter of priority.[15]

62. Under the Constitutional Justice Act, the enforcement judge appointed to rule on a petition for habeas corpus must order that the detainee be brought before him or her immediately, together with the original detention order and a copy thereof. In addition, a report must be submitted to the enforcement judge within no more than 24 hours with at least the following information:

(a) The authority or person who ordered the detention or ill-treatment and the full names of those who carried it out, with dates and a description of the circumstances in which it occurred;

(b) The reasons that motivated the detention or the actions that gave rise to the petition, the circumstances surrounding those actions and the dates on which they took place;

(c) Information as to whether the detainee or prisoner has remained in the custody of the party that detained him or her or has been transferred to another prison or detention centre, in which case the name of the prison or centre must be indicated, along with the date of transfer, information on the physical state of the petitioner at the time of transfer and the reason for the transfer;

(d) The signature and seal of the public official or other person providing the information.[16]

63. With regard to the existence of other possible domestic remedies, Honduran legislation also provides for the remedy of habeas data.[17]

[13] See annexes 2 and 3.

[14] Transparency and Access to Public Information Act, arts. 3 (5).

[15] Constitution, art. 182; Constitutional Justice Act, arts. 3, 13, 25 and 26.

[16] Constitutional Justice Act, art. 26.

[17] Constitutional Justice Act, arts. 13, 16, 40 and 70.

Reply to paragraph 16 of the list of issues

64. In order to verify the release of persons deprived of their liberty and ensure that they are safe and unharmed and fully able to enjoy their rights, under the Code of Criminal Procedure and the National Prison System Act, enforcement judges have a duty to monitor and verify the enforcement of sentences. As part of that duty, the enforcement judge must ensure that the detainee has been released on the date set in the sentence. Prison directors must inform the enforcement judge at least 30 days in advance of the date of sentence completion of all persons deprived of their liberty. In addition, a personal case file is kept on every detainee, containing details of the sentence length.

65. The discharge of persons deprived of their liberty involves: (1) verifying the legality of the release papers and identifying the judicial official who carried out the verification; (2) verifying the identity of the person to be discharged; (3) returning such personal belongings as the detainee requires, depending on whether he or she is to be transferred temporarily or permanently to another facility or definitively released; and (4) notifying the authority who requested or ordered the release and the appropriate institutional authority immediately of the discharge.

Reply to paragraph 17 of the list of issues

66. With regard to training programmes on the implementation of the Convention, the National Prison Institute has conducted a number of training workshops on human rights, but none specifically on enforced disappearance. However, the Human Rights Protection Unit has plans to cover enforced disappearance as part of its annual human rights training plan for 2018, intended for operational, technical and administrative staff of the National Prison Institute.

67. The Directorate for Education in Human Rights and a Culture of Peace within the Ministry of Human Rights has designed and produced a module on enforced disappearances that will be part of the training received by soldiers aspiring to join the Military Police. The module has been included in the training programme for 2018.

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)

Reply to paragraph 18 of the list of issues

68. With regard to the definition of victim established in article 17 of the Code of Criminal Procedure, under domestic law only the disappeared person may be considered to be the victim of enforced disappearance; in the event of his or her death, the status of victim is granted to his or her spouse or life partner, children, biological and/or adoptive parents, and relatives up to the fourth degree of consanguinity or second degree of affinity, and heirs.

69. Regarding access to compensation, under domestic legislation all criminal sentences entail civil liability. However, if the accused party is not found guilty, victims can initiate a civil proceeding known as "protection of fundamental rights and the right to honour" (*tutela de los derechos fundamentals y de derechos honoríficos*),[18] provided that all administrative remedies have been exhausted.[19] The criminal courts alone are competent to determine whether a person is the victim of enforced disappearance.

70. With regard to the obligation to guarantee the right of the victim to know the truth, according to article 198 of the Code of Criminal Procedure, the purpose of evidence is to establish the truth of the events and circumstances. Regarding the progress of the investigation, members of the victim's family have the right to see the case file and to

[18] Code of Civil Procedure, art. 495.

[19] Code of Civil Procedure, art. 414.

provide evidence, and they may appoint a private attorney to assist them in criminal proceedings.

Reply to paragraph 19 of the list of issues

71. With regard to the legal status of disappeared persons whose fate has not been clarified and the legal status of their relatives, article 84 of the Civil Code regulates the presumption of death and establishes that a disappeared person is presumed dead five years after he or she was last heard from. The presumed death must be registered in the national civil registry, following which the disappeared person's heirs and other beneficiaries may claim any rights to which the person was entitled, such as the right to an inheritance or to a pension or insurance. Until the presumed death has been registered, the disappeared person is considered to be alive for all legal purposes.

72. The Ministry of Foreign Affairs and International Cooperation provides legal and social assistance to the families of disappeared migrants, as described in the reply to paragraph 12 of the list of questions.

Reply to paragraph 20 of the list of issues

73. With regard to the measures taken to locate clandestine graves and the obstacles faced in that regard, the Violent Death Unit of Bajo Aguán has investigated the deaths of 118 persons linked to agricultural conflicts in the area of Bajo Aguán and carried out 57 exhumations, 26 of which resulted in judicial proceedings.

Reply to paragraph 21 of the list of issues

74. With regard to the existence of a mechanism for starting an immediate and urgent search for disappeared persons, two search mechanisms are in place in cases of abduction, enforced disappearance or unlawful detention. Both the police and the Public Prosecution Service take the necessary measures to search for, locate and free disappeared persons. If a disappearance is presumed to have been caused by a natural phenomenon or accident, such as a fire or a natural disaster, the fire department and the Standing Committee on Emergencies join the search.

Reply to paragraph 22 of the list of issues

75. With regard to the outcome of the adoption of the Special Act on the Promotion of Non-Governmental Organizations for Development, which provides for the right of association referred to in article 78 of the Constitution, and the Act on the Protection of Human Rights Defenders, Journalists, Media Professionals and Justice Officials, the administrative procedure for recognition of the legal status of associations has been simplified and the time required to complete the procedure has been reduced from an average of two years to an average of two weeks. Model application forms have been designed and applicants and their legal counsel have received training in how to set up their organizations.

Reply to paragraph 23 of the list of issues

76. The domestic mechanisms for searching for and identifying disappeared children and adolescents are the same as those employed for disappeared adults, which are described in the reply to paragraph 21 of the list of issues. With regard to the return of children and adolescents to their families of origin, once the immediate or extended family of the child or adolescent has been identified, he or she is returned to them if and when it is safe to do so. If the family environment is found to be unsafe, a temporary protective measure is put in place to ensure that the child or adolescent has adequate living conditions.

77. Special protective measures are only used on an exceptional basis and for a set period of time and only for the purpose of restoring rights. If children or adolescents have been separated from their immediate family, every effort must be made to return them to the family environment. Special temporary protective measures must be carefully reviewed on a regular basis, at least every three months, to ensure that they are serving their intended purpose and are in the best interests of the child.

78. The Directorate for Children, Adolescents and the Family deals with cases relating to abandonment and other unlawful acts that result in the separation of children and adolescents from their families of origin. Once involved in a case, the Directorate conducts an investigation to identify relatives. DNA tests are then carried out to determine the degree of kinship, if any, between the persons identified and the child or adolescent.

79. DNA testing is carried out by the Directorate-General of Forensic Medicine and the DNA-PROKIDS project. In 2017, 543 children were tested.[20] Children living in residential institutions or in foster care are tested on a priority basis with a view to preventing trafficking and unlawful adoption of children.

80. As to how the principle of the bests interests of the child is upheld, it is enshrined in the National Subsystem for Special Protection, the Monitoring and Evaluation Manual, the Rights Violations Care Guide, the Foster Families Protocol, and the Family Rights Violations Procedure, to name but a few examples.

81. With regard to DNA databases and the procedures in place to guarantee that disappeared children and adolescents may exercise their right to have their true identity re-established, psychological and social investigations must be carried out for every child or adolescent before he or she may be adopted. Notices are published in all major newspapers with a view to determining whether there are any immediate family members or other relatives who may be able to take charge of the child or adolescent. If the investigations reveal that the child or adolescent has been the victim of an offence, the Directorate for Children, Adolescents and the Family records its findings and hands the case over to the Public Prosecution Service.

82. If all attempts to locate family members have failed, the child or adolescent is declared, by means of an administrative resolution, to have been abandoned. The resolution is then submitted to the juvenile court, which issues a formal ruling that the child or adolescent has been abandoned. Only then can adoption occur. Hence, the adoption process is subject to a prior investigation aimed at ensuring the well-being of the children and adolescents concerned and avoiding any violation of their right to live with their families.

83. With regard to disappeared children and adolescents, once a situation has been recognized as posing a risk to the child's rights or physical integrity, under the Code on Children and Adolescents, that child's situation must be addressed in accordance with his or her rights and bests interests. The State must restore the child's rights, returning the child to his or her family, community and school, ensuring the safety of the protective environment in which the child is placed and avoiding any further violation of the child's rights.

84. With regard to the State's efforts to search for disappeared persons, the Directorate for Children, Adolescents and the Family and the Ministry of Foreign Affairs and International Cooperation work together to handle cases involving Honduran children and adolescents abroad whose rights have been violated as a result of abandonment, the death or disappearance of their parents, or maltreatment or abuse. Home visits are conducted in order to carry out socioeconomic and psychological studies, the results of which are used to determine whether the children or adolescents may return to their families. Support has been received from the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration for, inter alia, the review of applications for asylum or refugee status and the provision of financial support to facilitate the reintegration of families into their communities and to cover the cost of flights.

[20] Data provided by the Directorate for Children, Adolescents and the Family

Reply to paragraph 24 of the list of issues

85. With regard to the procedures in place to review and annul adoptions, the National Congress is due to consider a bill on adoption submitted to it in late 2016. The bill provides for the complete annulment of any adoption that fails to meet the requirements established by law; any adoption that has occurred as a result of error, coercion or fraud; and any adoption that originates from an offence. Annulment may only occur within a prescribed period. The offence of illegal adoption, which carries a sentence of 4 to 6 years' imprisonment, was established as a means of deterring adoptions that do not meet the legal requirements.[21]

86. Post-adoption follow-up procedures are in place to monitor the comprehensive development of children and adolescents and their integration into their adoptive families. Under Honduran law, follow-up must be carried out every four months in the first year after adoption, every six months in the second year and annually from the third year until the adopted person reaches the age of majority as established by the domestic law of the country of the adoptive parent or parents.

87. The current procedures in place to review and, where appropriate, annul any adoption, placement or guardianship are set out in the Family Code, which also establishes the requirements for the adoption process. Regarding possible limitations on actions for annulment, annulment may only be sought by persons concerned in the matter and only within a period of four years after the date on which the adoption was registered.

88. It is possible to claim enforced disappearance as grounds for the annulment of an adoption; it falls to the judicial authorities to decide whether annulment would be in the best interests of the child or adolescent.

89. Honduras has approved the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and is in the process of depositing its instrument of approval with a view to establishing safeguards that ensure that international adoptions take place in the best interests of the child and putting in place a system of cooperation between contracting States that ensures that those safeguards are respected and thereby prevent the abduction, the sale or the trafficking of children.

90. With respect to the procedures in place to uphold the right of families to search for child victims of enforced disappearance, parents or other family members who wish to search for disappeared children enjoy all the rights and have access to all the mechanisms described in this report.

91. Although there is currently no specific programme in place to allow adults to recover their true identity, the investigation of paternity is permitted under article 115 of the Constitution, which provides that the relevant procedures shall be established by law. Accordingly, for the purposes of filiation proceedings, paternity or maternity tests may be conducted using blood, DNA samples or any other method of determining paternity or maternity that may be developed in the future; there is no statute of limitations in such proceedings. The Code of Civil Procedure thus provides for the possibility of instigating legal proceedings to determine filiation, maternity or paternity, on the basis of the Family Code currently in force.[22] Such proceedings may be instigated by the person concerned, that person's legal representative or the Public Prosecution Service in respect of any person if there are reasonable grounds to believe that he or she is related by a close degree of consanguinity to the person concerned, in order to determine the latter's true identity.[23]

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[21] Criminal Code, art. 170 (b).

[22] Family Code, arts. 107 to 111.

[23] Code of Civil Procedure of Honduras, arts. 629, 630, 632, 644, 645 and 647.